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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,841	08/18/2003	Andrew Silver	19018.00011	4077
7590 ANDREW SILVER 5830 SILVER SPUR FRISCO, TX 75034			EXAMINER FRENEL, VANEL	
			ART UNIT 3687	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/642,841

Applicant(s)

SILVER, ANDREW

Examiner

VANEL FRENEL

Art Unit

3687

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/10/08 has been entered.

Notice to Applicant

2. This communication is in response to the RCE filed on 06/10/08. Claims 1-2, 5, 10 have been amended. Claims 1-20 are pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (6,844,893) in view of Ragsdale-Elliott et al (2002/0147647).

(A) As per claim 1, Miller discloses a restaurant customer management system that manages customer data elements (See Miller, Col.5, lines 61-67 to Col.6, line 6), the

system comprising: a software program that receives at least one customer request of at least one service from a restaurant (See Miller, Col.8, lines 53-67 to Col.9, line 8).

Miller does not explicitly disclose that the restaurant having a customer managed post-dining system that processes at least one customer data element via a self-check out and payment processing system; and a terminal device, located remotely from the software program, the terminal device adapted to allow a customer unit to operate the post-dining system.

However, these features are known in the art, as evidenced by Ragsdale. In particular, Ragsdale suggests that the restaurant having a customer managed post-dining system that processes at least one customer data element via a self-check out and payment processing system (See Ragsdale, Page 4, Paragraph 0053); and a terminal device, located remotely from the software program, the terminal device adapted to allow a customer unit to operate the post-dining system (See Ragsdale, Page 5, Paragraphs 0089-0090).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Ragsdale within the system of Miller with the motivation of providing a wireless maitre d' system and method which allows interactive two-way communication to selective restaurant personnel for expeditiously receiving, filling and finalizing patron orders in and outside of restaurants (See Ragsdale, Page 2, Paragraph 0016).

(B) As per claim 2, Miller discloses the restaurant customer management system

wherein the customer unit is a group of people (See Miller, Col.2, lines 21-24).

(C) As per claim 3, Ragsdale discloses the restaurant customer management system wherein the terminal device is a thin client (See Ragsdale, Page 3, Paragraph 0036).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(D) As per claim 4, Ragsdale discloses the restaurant customer management system wherein the terminal device is a wireless enabled handheld computer (See Ragsdale, Page 3, Paragraph 0036).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(E) As per claim 5, Ragsdale discloses the restaurant customer management system wherein the restaurant comprises a pre-dining system that identifies the customer unit, manages queue assignment, pages the customer unit, updates a table management system, and stores a least one customer data element in a database (See Ragsdale, Page 4, Paragraph 0054).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(F) As per claim 6, Ragsdale discloses the restaurant customer management system

wherein the restaurant comprises a dining system that provides an interactive menu (See Fig.2; Ragsdale, Page 4, Paragraphs 0047-0051).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(G) As per claim 7, Ragsdale discloses the restaurant customer management system wherein the self-check out and payment processing system comprises a handheld terminal device having at least: a payment means (See Ragsdale, Page 4, Paragraph 0053); a digital signature capturing means (See Ragsdale, Page 4, Paragraph 0053); and a graphical user interface (See Ragsdale, Page 1, Paragraph 0012).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(H) As per claim 8, Ragsdale discloses the restaurant customer management system wherein the post-dining system provides a post-dining survey (See Ragsdale, Page 2, Paragraph 0015), collects at least one customer data element from the customer unit via a terminal device, and stores the customer data element in a database (See Ragsdale, Page 5, Paragraphs 0089-0090).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(I) As per claim 9, Ragsdale discloses the restaurant customer management

method wherein the post-dining system enables the customer unit to pre-purchase an entertainment unit prior to leaving the restaurant via a customer operated terminal device and receive a hard copy confirming the entertainment unit purchase (See Ragsdale, Page 4, Paragraphs 0053-0054).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(J) As per claim 10, Miller discloses a restaurant customer management system that manages customer data elements (See Miller, Col.5, lines 61-67 to Col.6, line 6), the system comprising: a software program that receives at least one customer request of at least one service from a restaurant (See Miller, Col.8, lines 53-67 to Col.9, line 8).

Miller does not explicitly disclose that the restaurant having a customer managed post-dining system that processes at least one customer data element via a self-check out and payment processing system; and a terminal device, located remotely from the software program, the terminal device adapted to allow a customer unit to operate the post-dining system, whereby, the method comprising: a bill review act; a gratuity assignment act; a digital signature act; a payment processing act; a digital receipt storage act; and a customer receipt act.

However, these features are known in the art, as evidenced by Ragsdale. In particular, Ragsdale suggests that the restaurant having a customer managed post-dining system that processes at least one customer data element via a self-check out and payment processing system (See Ragsdale, Page 4, Paragraph 0053); and a

terminal device, located remotely from the software program, the terminal device adapted to allow a customer unit to operate the post-dining system, whereby, the method comprising: a bill review act (See Ragsdale, Page 4, Paragraph 0053); a gratuity assignment act (See Ragsdale, Page 4, Paragraph 0054); a digital signature act (See Ragsdale, Page 4, Paragraph 0046); a payment processing act (See Ragsdale, Page 4, Paragraph 0054); a digital receipt storage act (See Ragsdale, Page 4, Paragraph 0053); and a customer receipt act (See Ragsdale, Page 4, Paragraph 0053).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Ragsdale within the system of Miller with the motivation of providing a wireless maitre d' system and method which allows interactive two-way communication to selective restaurant personnel for expeditiously receiving, filling and finalizing patron orders in and outside of restaurants (See Ragsdale, Page 2, Paragraph 0016).

(K) As per claim 11, Ragsdale discloses the restaurant customer management method wherein the customer receipt act prints a copy of a digital receipt (See Ragsdale, Page 4, Paragraph 0053).

(L) As per claim 12, Ragsdale discloses the restaurant customer management method wherein the gratuity assignment act enables a customer to automatically select a predefined gratuity percent from a graphical user interface (See Ragsdale, Page 4, Paragraphs 0046-0047).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(M) As per claim 13, Ragsdale discloses the restaurant customer management method wherein the customer data element is an online payment service provider account number (See Ragsdale, Page 4, Paragraph 0053).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(N) As per claim 14, Ragsdale discloses the restaurant customer method wherein the restaurant is a cafeteria establishment having a customer managed cafeteria method comprising: a cafeteria selection act (See Ragsdale, Page 5, Paragraph 0069); and a customer check out act (See Ragsdale, Page 4, Paragraph 0053).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(O) As per claim 15, Ragsdale discloses the restaurant customer method wherein the cafeteria selection act occurs when a customer unit takes a food or beverage items from a cafeteria countertop (See Ragsdale, Page 4, Paragraphs 0047-0051).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(P) As per claim 16, Ragsdale discloses the restaurant customer method wherein the customer check out act is when a customer unit pays for food and beverage items selected via a payment means (See Ragsdale, Page 4, Paragraph 0053).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

(Q) As per claim 17, Ragsdale discloses the restaurant customer management method wherein the payment means is an RFID card (See Ragsdale, Page 1, Paragraph 0011).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

5. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (6,844,893) in view of Nielsen et al.(6,848,613).

(A) As per claim 18, Miller discloses a method of identifying a person associated with a menu item (See Miller, Col.8, lines 7-24).

Miller does not explicitly disclose that the method having splitting a customer bill on a terminal device comprising: identifying a number of people at a table; splitting at least one restaurant item between at least two people; monitoring a bill balance; and closing an individual bill balance.

However, these features are known in the art, as evidenced by Nielsen. In particular, Nielsen suggests that the method having splitting a customer bill on a terminal device (See Nielsen, Col.20, lines 35-56) comprising: identifying a number of

people at a table (See Nielsen, Col.20, lines 35-56); splitting at least one restaurant item between at least two people (See Nielsen, Col.20, lines 35-39); monitoring a bill balance (See Nielsen, Fig.5; Col.20, lines 48-64); and closing an individual bill balance (See Nielsen, Col.20, lines 35-64).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Nielsen within the system of Miller with the motivation of improving authorization process for electronic payment transactions, which incorporate gratuity payments, can be achieved simply by determining the total amount that is to be paid electronically prior to obtaining authorization for a transaction from an acquirer (See Nielsen, Col.4, lines 10-15).

(B) As per claim 19, Nielsen discloses the method of splitting a customer bill on a terminal device wherein identifying a person associated with a menu item is accomplished by a customer manipulating a software system graphical user interface on a terminal device (See Nielsen, Col.15, lines 16-25).

The motivation for combining the respective teachings of Miller and Nielsen are as discussed in the rejection of claim 18 above, and incorporated herein.

(C) As per claim 20, Nielsen discloses the method of splitting a customer bill on a terminal device wherein closing an individual bill balance (See Nielsen, Col.20, lines 35-52) comprises: a restaurant customer management system for processing a customer data element, tracking a customer data element, and storing a customer data element

(See Nielsen, Col.19, lines 7-31); a terminal device having an operating system for running a graphical user interface software, digital signature capture software, and payment processing software (See Nielsen, Col.19, lines 57-67); and a printer for printing a customer receipt (See Nielsen, Col.20, lines 53-64).

Response to Arguments

6. Applicant's arguments filed on 6/10/08 with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

At pages 6-9 of the 6/10/08 response, Applicant argues that the features in the 6/10/08 amendment are not taught by or suggested by the applied references.

In response, all of the limitations which Applicant disputes as missing in the applied references have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Miller, Ragsdale and/or Nielsen based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the Office Action, and incorporated herein. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981), *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the

references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied art teaches multi-function customer satisfaction survey device (6,960,988), planar means for indicating a gratuity as a function (6,019,393), and systems and methods for utilizing a point-of-sale system (2002/0156683).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vanel Frenel/

Examiner, Art Unit 3687

July 18, 2008